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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/568,012

02/10/2006

Peter Neugebauer

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EXAMINER

SLIFKA, COLIN W

ART UNIT

PAPER NUMBER

1732

MAIL DATE

DELIVERY MODE

09/20/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/568,012	Applicant(s) NEUGEBAUER ET AL.	
	Examiner COLIN W. SLIFKA	Art Unit 1732	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 07 September 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8 and 10-35.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 9/7/2011
13. ☐ Other: _____.

/Melvin Curtis Mayes/
Supervisory Patent Examiner, Art Unit 1732

/COLIN W SLIFKA/
Examiner, Art Unit 1732

Continuation of 3. NOTE: New claims 39 and 40 have not been previously presented. As such, they would require further consideration. The limitations from cancelled claim 7, which have been brought into independent claim 1, have been previously discussed; however, such an amendment has incorporated said limitations into all of the dependent claims, which raises new issues.

Continuation of 11. does NOT place the application in condition for allowance because: They are not found to be persuasive. Applicant's arguments will be addressed according to their relative numerals given in the Remarks filed 9/7/2011.

Regarding I, Applicant states the various preferred intended uses of the silicas of the prior art. This has been addressed sufficiently in the past 2 Office actions. It is important to recognize that regardless of the specific intended uses, the prior art teaches the use of silica as an adsorbent base. Applicant states that the reason why the primary reference of Roman would have been modified to include the Deller silica to attain the functions taught by the remaining secondary references is not entirely clear. Examiner respectfully disagrees. At least the prior Office action explicitly explains why each reference was relied upon and provides motivation for the combination, as is required by any 103 rejection involving more than one reference. One such reason would be that the silica of Deller, as shown by said remaining secondary references, is superior to precipitated silica and even non-granulated pyrogenic silica. Therefore, it would have been obvious to use the silica of Deller in the invention of Roman as said silica is known to be an effective/superior adsorbent and also to ensure that the powder of Roman benefits from superior characteristics such as improved flowability. As the title of Roman, for example, refers to "flowable powder," flowability is considered to be an important property of said powder. Applicant also argues that a prima facie case of obviousness is rebutted because the results of the instant application show improved flowability. Applicant's footnote (1) on page 10 discusses said results in further detail. Examiner respectfully disagrees. Said results and examples only compare pyrogenically-produced silica with precipitated silica. While Examiner can appreciate the results and would agree that said results do show a superiority of pyrogenic silica over precipitated silica, this is to be completely expected in view of the prior art of record, which explicitly states that granular pyrogenic silica is superior to both precipitated silica and even non-granular pyrogenic silica in characteristics such as flowability, water content, and purity. While said results may show that pyrogenic silica is superior to precipitated silica, said results are not considered to be unexpected because it is already known that such granular pyrogenic silica exhibits excellent properties and additionally is preferred over precipitated silica.

Regarding II, similarly to I, Applicant argues that the reason for the combination of prior art is not entirely clear and unexpected results have been shown. The argument regarding unexpected results has been addressed at least both above and in the prior action.

Regarding the combination of references, Minemoto does not teach a specific type of silica. As such, it would have been obvious to employ one that is known in the art to be superior to others, and is an effective adsorbent carrier (i.e. the silica of Deller). The lack of specificity in Minemoto as to which type of silica should be used cannot limit said teachings. In fact, as Minemoto is not limited, it could be argued that any porous-grained silica could be used as the carrier of Minemoto. As the prior art of record suggests that the carrier of Deller exhibits excellent characteristics for several different properties and is at least an acceptable adsorbent, it would have been obvious to use the carrier of Deller in the invention of Minemoto.

Regarding III, similarly to I and II, Applicant argues that the reason for the combination of prior art is not entirely clear and unexpected results have been shown. The argument regarding unexpected results has been addressed at least both above and in the prior action.

Regarding the combination of references, Applicant argues that all of the silica carriers of Park appear to be precipitated silicas. As stated both above and in the prior action, the prior art of record teaches that pyrogenic silica adsorbents are superior to precipitated silica adsorbents.

Regarding IV, it appears that Applicant misinterprets the rejection in view of Peterson. The rejection is not saying that it would have been obvious to substitute the powder carriers of Peterson for the adsorbent carriers of Deller, but is instead stating that it would have been obvious to use the silica granules of Deller as a dry binder in Peterson's body powder because the press release teaches that such silica adsorbates are superior dry binders. Peterson teaches the use of isopropyl or magnesium myristate as binders, and the press release explicitly teaches that said binders alone are inferior to dry binders utilizing Aeroperl (which is the silica of Deller as well as the instantly claimed invention).

Regarding V, similarly to I, II, and III, Applicant argues that the reason for the combination of prior art is not entirely clear and unexpected results have been shown. The argument regarding unexpected results has been addressed at least both above and in the prior action.

Regarding the combination of references, the prior art of record suggests that the silica of Deller is useful as an adsorbent carrier and is superior to loose or precipitated alternatives. In other words, not only would the silica of Deller be at the very least a suitable alternative for the silica of the Technical Bulletin as a carrier for molasses, but it would also be expected to show superior properties.

Many of the arguments made by Applicant After Final are similar to those made in the previous two actions. As such, there may be relevant arguments discussed in either of said two actions that have not been made in this action explicitly. Said Response to Arguments sections from the Office actions mailed June 28, 2011 and February 23, 2011 are not necessarily relied upon, but are nevertheless incorporated herein by reference.